

DRAFT
Subject to Legal Review for Clarity and Consistency
April 3, 2003

Chapter Eighteen

Labor

Article 18.1: Statement of Shared Commitment

1. The Parties reaffirm their obligations as members of the *International Labor Organization* (ILO) and their commitments under the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up* (1998). Each Party shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in Article 18.8 are recognized and protected by its domestic law.

2. Recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws, each Party shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights set forth in Article 18.8 and shall strive to improve those standards in that light.

Article 18.2: Enforcement of Labor Laws

1. (a) A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.
- (b) The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a *bona fide* decision regarding the allocation of resources.

2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to the internationally recognized labor rights referred to in Article 18.8 as an encouragement for trade with the other Party, or as an encouragement for the establishment, acquisition, expansion or retention of an investment in its territory.

3. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of the other Party.

DRAFT
Subject to Legal Review for Clarity and Consistency
April 3, 2003

Article 18.3: Procedural Guarantees and Public Awareness

1. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to judicial tribunals of general, labor or other specific jurisdiction, quasi-judicial tribunals, or administrative tribunals, as appropriate, for the enforcement of the Party's labor laws.
2. Each Party shall ensure that its proceedings for the enforcement of its labor laws are fair, equitable and transparent.
3. Each Party shall provide that the parties to such proceedings may seek remedies to ensure the enforcement of their rights under domestic labor laws.
4. For greater certainty, decisions by each Party's judicial tribunals of general, labor, or other specific jurisdiction, quasi-judicial tribunals, or administrative tribunals, as appropriate, or pending decisions, as well as related proceedings, shall not be subject to revision or reopened under the provisions of this Chapter.
5. Each Party shall promote public awareness of its labor laws.

Article 18.4: Labor Affairs Council

1. The Parties hereby establish a Labor Affairs Council, comprising cabinet-level or equivalent representatives of the Parties, or their designees.
2. The Council shall meet within the first year after the date of entry into force of this Agreement and thereafter as often as it considers necessary to oversee the implementation of and review progress under this Chapter, including the activities of the Labor Cooperation Mechanism established under Article 18.5, and to pursue the labor objectives of this Agreement. Each meeting of the Council shall include a public session, unless the Parties otherwise agree.
3. Each Party shall designate an office within its labor ministry that shall serve as a point of contact with the other Party, and with the public, for purposes of carrying out the work of the Council.
4. The Council shall establish its work program and procedures and may, in carrying out its work, establish governmental working or expert groups and consult with or seek advice of non-governmental organizations or persons, including independent experts.
5. All decisions of the Council shall be taken by mutual agreement of the Parties and shall

DRAFT
Subject to Legal Review for Clarity and Consistency
April 3, 2003

be made public, unless the Council decides otherwise.

6. Each Party may convene a national consultative or advisory committee, as appropriate, comprising members of its public, including representatives of its labor and business organizations and other persons to provide views regarding the implementation of this Chapter.

7. Each Party's point of contact shall provide for the submission, receipt and consideration of public communications on matters related to this Chapter, and shall make such communications available to the other Party and the public. Each Party shall review such communications, as appropriate, in accordance with its domestic procedures.

Article 18.5: Labor Cooperation Mechanism

Recognizing that cooperation provides enhanced opportunities for the Parties to promote respect for the principles embodied in the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up* (1998), compliance with *ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor* (1999), and to advance other common commitments, the Parties hereby establish a Labor Cooperation Mechanism, as set out in Annex 18.5.

Article 18.6: Cooperative Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the point of contact that the other Party has designated under Article 18.4(3).

2. The Parties shall consult promptly after delivery of the request. The requesting Party shall provide specific and sufficient information in the request for the other Party to respond.

3. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue.

4. If the Parties fail to resolve a matter through consultations, either Party may request that the Council be convened to consider the matter by delivering a written request to the other Party's point of contact.

5. The Council shall promptly convene and shall endeavor to resolve the matter, including, where appropriate, by consulting outside experts and having recourse to such procedures as good offices, conciliation or mediation.

DRAFT
Subject to Legal Review for Clarity and Consistency
April 3, 2003

6. If the matter concerns whether a Party is conforming to its obligations under Article 18.2(1)(a), and the Parties have failed to resolve the matter within 60 days of a request under paragraph 1, the complaining Party may request consultations under Article 22.4 (Consultations) or a meeting of the Commission under Article 22.5 (Commission – Good Offices, Conciliation and Mediation) and, as provided in Chapter Twenty-Two (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter.

7. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under any provision of this Chapter other than Article 18.2(1)(a).

8. Neither Party may have recourse to dispute settlement under this Agreement for a matter arising under Article 18.2(1)(a) without first pursuing resolution of the matter in accordance with this Article.

Article 18.7: Labor Roster

1. The Parties shall establish within six months after the date of entry into force of this Agreement and maintain a roster of up to 12 individuals who are willing and able to serve as panelists in disputes arising under Article 18.2(1)(a). Unless the Parties otherwise agree, four members of the roster shall be selected from among individuals who are non-Party nationals. Labor roster members shall be appointed by mutual agreement of the Parties and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster.

2. Labor roster members shall:

- (a) have expertise or experience in labor law or its enforcement, or in the resolution of disputes arising under international agreements;
- (b) be chosen strictly on the basis of objectivity, reliability and sound judgment;
- (c) be independent of, and not affiliated with or take instructions from, either Party; and
- (d) comply with a code of conduct to be established by the Commission.

3. Where a Party claims that a dispute arises under Article 18.2(1)(a), Article 22.9 (Dispute Settlement - Panel Selection) shall apply, except that the panel shall be composed entirely of panelists meeting the qualifications in paragraph 2.

Article 18.8: Definitions

DRAFT
Subject to Legal Review for Clarity and Consistency
April 3, 2003

For purposes of this Chapter:

labor laws means a Party's statutes or regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights:

- (a) the right of association;
- (b) the right to organize and bargain collectively;
- (c) a prohibition on the use of any form of forced or compulsory labor;
- (d) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and
- (e) acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health.

For greater certainty, the setting of standards and levels in respect of minimum wages by each Party shall not be subject to obligations under this Chapter. Each Party's obligations under this Chapter pertain to enforcing the level of the general minimum wage established by that Party.

statutes or regulations means:

- (a) for the United States, acts of the Congress or regulations promulgated pursuant to acts of the Congress that are enforceable by action of the federal government; and
- (b) for Chile, acts or regulations promulgated pursuant to acts that are enforceable by the agency charged with enforcing Chile's labor laws.

DRAFT
Subject to Legal Review for Clarity and Consistency
April 3, 2003

ANNEX 18.5

LABOR COOPERATION MECHANISM

Establishment of a Labor Cooperation Mechanism

1. Recognizing that bilateral cooperation on labor matters will provide enhanced opportunities for the Parties to improve labor standards, and to further advance their common commitments, including the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)*, the Parties have established a Labor Cooperation Mechanism.

Organization and Principal Functions

2. Each Party shall designate an office within its ministry of labor to serve as a point of contact to support the work of the Labor Cooperation Mechanism.

3. The Parties' labor ministries shall carry out the work of the Labor Cooperation Mechanism by developing and pursuing cooperative activities on labor matters, including by working jointly to:

- (a) establish priorities for cooperative activities;
- (b) develop and periodically revise a work program of specific cooperative activities in accord with such priorities;
- (c) exchange information regarding labor policies and the observance and effective application of labor law and practice in the Parties' territories;
- (d) exchange information on and encourage best labor practices, including best practices adopted by multinational firms, small and medium enterprises and other private enterprises, as well as by labor organizations;
- (e) advance understanding of, respect for, and effective implementation of the principles reflected in the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)*;
- (f) promote the collection and publication of comparable data on labor standards, labor market indicators and enforcement activity;
- (g) arrange periodic labor cooperation review sessions at the request of either Party,

DRAFT
Subject to Legal Review for Clarity and Consistency
April 3, 2003

review current cooperative activities and provide guidance for future cooperative activities between the Parties; and

- (h) develop recommendations to their respective governments for their consideration.

Cooperative Activities

4. The Labor Cooperation Mechanism may undertake cooperative activities on any labor matter it considers appropriate, such as on:

- (a) *fundamental rights and their effective application*: legislation, practice and implementation related to the core elements of the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)* (freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labor, abolition of child labor, including the worst forms of child labor in compliance with the ILO Convention N°182 on the *Worst Forms of Child Labour (1999)*, and elimination of employment discrimination);
- (b) *labor relations*: forms of cooperation among workers, management and governments, including the resolution of labor disputes;
- (c) *working conditions*: legislation, practice and implementation related to occupational safety and health; prevention of and compensation for work-related injuries and illness; and employment conditions;
- (d) *issues related to small and medium enterprises*: promotion of fundamental rights at work; improvement of working conditions; forms of cooperation between employers and worker representatives; and social protection services agreed between workers' organizations and employers or their associations;
- (e) *social protections*: human resource development and employment training; work benefits; social programs for workers and their families; migrant workers; worker adjustment programs; and social protection, including social security, income security and health care services;
- (f) *technical issues and information exchange*: programs, methodologies and experiences regarding productivity improvement; labor statistics, including comparable data; current ILO issues and activities; consideration and encouragement of best labor practices; and the effective use of technologies, including those that are Internet-based; and

DRAFT
Subject to Legal Review for Clarity and Consistency
April 3, 2003

- (g) implications of economic integration between the Parties for advancing each Party's labor objectives;

Implementation of Cooperative Activities

5. The Parties may carry out cooperative activities under this Annex through any form they deem appropriate, including by:

- (a) exchanging government delegations, professionals and specialists, including through study visits;
- (b) sharing information, standards, regulations and procedures and best practices, including through the exchange of pertinent publications and monographs;
- (c) organizing joint conferences, seminars, workshops, meetings, training sessions, and outreach and education programs;
- (d) developing collaborative projects or demonstrations;
- (e) undertaking joint research projects, studies and reports, including by engaging independent experts with relevant expertise;
- (f) drawing on the expertise of academic and other institutions in their territories in developing and implementing cooperative programs and by encouraging relationships between such institutions on technical labor issues; and
- (g) engaging in technical exchanges and cooperation.

6. In identifying areas for cooperation and carrying out cooperative activities, the Parties shall consider views of their respective worker and employer representatives, as well as other members of civil society.